



BALCH & BINGHAM LLP

Alabama • Georgia • Mississippi • Washington, DC

Lindsay S. Reese
(205) 226-3493

Attorneys and Counselors
1901 Sixth Avenue North, Suite 1500
P.O. Box 306 (35201-0306)
Birmingham, Alabama 35203-4642
(205) 251-8100
(205) 226-8799 Fax
www.balch.com

(205) 488-5620 (direct fax)
lreese@balch.com

March 17, 2011

Commissioner Meredith Attwell Baker
ATTN: Mr. Brad Gillen
Federal Communications Commission
445 12th Street SW
Room: 8-A204
Washington, DC 20554

**Re: Implementation of Section 224 of the Act, WC Docket No. 07-245; A National
Broadband Plan for Our Future, GN Docket No. 09-51**

Dear Mr. Gillen:

On Monday, March 7, 2011, Karen Flewharty (Oncor Electric Delivery), Hagen Haentsch (Oncor Electric Delivery), Allen Estes and I (Balch & Bingham LLP on behalf of Oncor Electric Delivery) met with you to discuss pole attachment matters involved in the above referenced dockets. We greatly appreciate you taking the time out of your busy schedule to discuss these matters with us. During the meeting, Oncor shared some of its success stories in being able to work with its more cooperative attachers at the local level to meet the goals of both parties. In addition, Oncor expressed its position that the FCC should leave the details of the make-ready process to the private parties and that the FCC should address any and all complaints regarding the make-ready process on a case-by-case basis through the current complaint process or a rocket docket. While Oncor certainly understands the FCC's goals, Oncor believes that many of the proposed regulations, including the proposed make-ready timeline, will jeopardize and impede the relationships and progress being made at the local/operational level.

During the meeting, you requested and Oncor agreed to provide citations to record evidence regarding possible limitations and/or exclusions for consideration by the FCC in the event the FCC adopts Proposed Rule 1.1420 (timeline for access to poles, ducts, conduits and rights of way).¹ Again, Oncor believes that the details of the make-ready process are best determined by the pole owner with input from attachers, including what "triggers" and/or stops the proposed make-ready timeline. In response to your request, Oncor submits the following record citations:

¹ As expressed throughout the numerous comments filed by pole owners, to the extent the FCC adopts a make-ready timeline, Oncor urges the FCC to clarify that the timeline is simply a limited "guideline" and establish that the timeline is only a rebuttable presumption.

I. Limitations on Number of Poles and/or Permit Applications

- No more than 10 permit applications within thirty days (with collectively no more than 120 poles)²
- No more than 500 poles per 45-day period³
- No more than 100 poles per request⁴
- No more than 50 poles per application and advanced notice for significant (as determined by the pole owner) requests⁵
- Any request that exceeds 50 poles or 5% (whichever is lower) of the owner's poles should fall outside of the proposed timeline⁶

II. Exclusions from the Proposed 45-day Make-Ready Timeline and/or When the Timeline Should Stop

- Wireless attachments⁷
- Ducts and conduits⁸
- At the reasonable discretion of the pole owner⁹
- Where parties contractually agree to deviate from the proposed timeline¹⁰

² Initial Comments of Oncor Electric Delivery Company ("Oncor"), p. 22; Initial Comments of the Florida Investor-Owned Electric Utilities ("Florida IOUs"), p. 14.

³ Initial Comments of the Florida IOUs, p. 14.

⁴ Initial Comments of NTCA, OPASTCO, WTA and ERTA, p. 10.

⁵ Initial Comments of CPS Energy ("CPS"), p. 10.

⁶ Initial Comments of American Public Power Association ("APPA"), p. 24. Oncor does not believe this limitation would be sufficient without the "whichever is lower" condition. As the owner of more than 2 million poles, 5% of the total owned poles would subject a permit application for 100,000 poles to the proposed timeline.

⁷ Initial Comments of Oncor, pp. 33-38; Initial Comments of the Florida IOUs, p. 28; Initial Comments of Ameren, Centerpoint, Houston Electric and Virginia Electric and Power Company ("POWER Coalition"), p. 12-13; Initial Comments of APPA, p. 25; Initial Comments of the Edison Electric Institute and the Utilities Telecom Council ("EEI/UTC"), p. 26; Reply Comments of the Alliance for Fair Pole Attachment Rules ("Alliance"), p. 52.

⁸ Initial Comments of APPA, p. 25.

⁹ Initial Comments of Oncor, pp. 26-27.

- Where attachers exceed the limitations on permit applications¹¹
- Projects in excess of 25 poles where the attacher has not scheduled and organized advance planning meetings¹²
- Attacher-caused delays (such as failure to respond timely to a utility's request for additional information)¹³
- Where access is denied¹⁴
- Where incomplete or inaccurate information is submitted by the attacher¹⁵
- Any change to or reprioritization of the permit application(s) by the attacher once submitted¹⁶
- Where rearrangement of existing facilities would be needed to provide sufficient capacity¹⁷
- Where power space make-ready is required¹⁸
- Where a pole changeout/replacement is required¹⁹
- Where customer clearance is required²⁰

¹⁰ Initial Comments of the National Rural Electric Cooperative Association ("NRECA"), p. 10; Initial Comments of EEI/UTC, p. 17.

¹¹ Initial Comments of Oncor, p. 29.

¹² Initial Comments of the Coalition of Concerned Utilities ("Coalition"), p. 32.

¹³ Initial Comments of the Coalition, p. 25; Initial Comments of EEI/UTC, p. 22.

¹⁴ Initial Comments the Alliance, pp. 17-18.

¹⁵ Initial Comments of the Florida IOUs, p. 16; Initial Comments of the Alliance, p. 22; Initial Comments the POWER Coalition, p. 4; Initial Comments of the NRECA, p. 8; Initial Comments of Alliant Energy ("Alliant"), p. 2; Initial Comments of EEI/UTC, pp. 21-22.

¹⁶ Initial Comments of the Alliance, p. 23.

¹⁷ Initial Comments of the Alliance, p. 17; Initial Comments of Oncor, p. 24-25.

¹⁸ Initial Comments of Oncor, p. 24; Initial Comments of the Florida IOUs, pp. 18, 23.

¹⁹ Initial Comments of the Alliance, pp. 15-16; Initial Comments of the POWER Coalition, p. 4; Initial Comments of the Coalition, p. 30.

- When applications include cell tower back haul projects²¹
- When poles with multiple electric circuits, junction poles, poles with electric equipment such as transformers, capacitors, reclosers and pole risers are involved²²
- Where poles located in backyards and on other private property are involved²³
- Where the applicant has engaged a third-party contractor to perform the survey, rearrangement, or construction work²⁴
- Where the utility has insufficient internal resources available and must contract out some of the work²⁵
- In the event of circumstances beyond the utility's reasonable control²⁶
- When sufficient construction materials are not readily at hand²⁷
- Where make-ready requires modification of another party's attachments and/or when existing attachments fail to act in a timely manner²⁸
- When, at any time, the utility identifies a safety and/or reliability issue related to the application or when a modification is needed to bring a facility into compliance when a new attachment is added²⁹

²⁰ Initial Comments of Oncor, pp. 28-29; Initial Comments of the Florida IOUs, p. 23; Initial Comments of the Coalition, p. 20.

²¹ Initial Comments of Oncor, p. 29.

²² Initial Comments of Idaho Power Company, p. 3.

²³ Initial Comments of Idaho Power Company, p. 3.

²⁴ Initial Comments of the Alliance, p. 17.

²⁵ Initial Comments of the Coalition, p. 21.

²⁶ Initial Comments of the Alliance, pp. 18-19; Initial Comments of EEI/UTC, p. 22.

²⁷ Initial Comments of the Coalition, p. 21.

²⁸ Initial Comments of Oncor, pp. 24-25, 29; Initial Comments of the Alliance, p. 20; Initial Comments of the POWER Coalition, p. 10; Initial Comments of the Coalition, p. 24; Initial Comments of APPA, p. 24; Initial Comments of EEI/UTC, p. 22.

²⁹ Initial Comments of the Alliance, p. 20; Initial Comments of the POWER Coalition, p. 9; Initial Comments of EEI/UTC, p. 22.

- *Force majeure* and related circumstances (hurricanes, storms, floods, volcanic eruptions, earthquakes, war, riot, crime, etc.)³⁰
- Storm restoration³¹
- Extended system-wide outages; multiple, frequent short-term or local outages³²
- When mutual assistance obligations come into play³³
- Accidents such as damage to poles caused by vehicle accidents, unauthorized digging, etc.³⁴
- Strike, work stoppage or labor shortage³⁵
- When union labor regulations result in delayed rearrangements or transfers³⁶
- Where conflicting obligations under Federal, state or local law (including cities, counties, State Departments of Transportation, State Public Utility Commissions, etc.) exist³⁷
- When railroad/highway/right-of-way permits must be obtained or restrictions come into play³⁸

³⁰ Initial Comments of Oncor, p. 27; Initial Comments of the Alliance, p. 20; Initial Comments of the POWER Coalition, p. 9; Initial Comments of the Coalition, p. 20; Initial Comments of APPA, p. 24; Initial Comments of EEI/UTC, p. 22.

³¹ Initial Comments of Oncor, p. 29; Initial Comments of the Florida IOUs, p. 26; Initial Comments of the Coalition, p. 20; Initial Comments of EEI/UTC, p. 22.

³² Initial Comments of the POWER Coalition, p. 9; Initial Comments of EEI/UTC, p. 22.

³³ Initial Comments of Oncor, pp. 27, 29; Initial Comments of the Florida IOUs, p. 26; Initial Comments of the Alliance, p. 20; Initial Comments of the Coalition, p. 20.

³⁴ Initial Comments of the Alliance, p. 20; Initial Comments of the POWER Coalition, p. 9.

³⁵ Initial Comments of the Florida IOUs, p. 26; Initial Comments of the Alliance, p. 20; Initial Comments of the POWER Coalition, p. 9; Initial Comments of the Coalition, p. 25.

³⁶ Initial Comments of the Alliance, p. 21.

³⁷ Initial Comments of the Alliance, p. 21; Initial Comments of the Florida IOUs, p. 26; Initial Comments of the Coalition, p. 22; Initial Comments of EEI/UTC, p. 22.

³⁸ Initial Comments of Oncor, p. 27; Initial Comments of the Florida IOUs, p. 26; Initial Comments of the Alliance, p. 21.

- Where an applicant fails to pay for the make-ready prior to performance of work³⁹
- Where conflicting obligations with the attachment agreement exist⁴⁰
- When the applicant currently has unauthorized attachments⁴¹
- When the application requires moving or modification of governmental or private attachments or others not regulated by the FCC⁴²
- When the government cannot pay for the transfer of its facilities or related work⁴³
- When property rights do not exist to authorize the attachments, such as when an easement is required⁴⁴
- When environmental concerns come into play, such as when working near natural habitats of endangered species or other sensitive environmental areas⁴⁵

While this is certainly not a comprehensive list, it provides the FCC with a *starting point* of the types of limitations and exceptions that would need to accompany any timeline the FCC may choose to adopt.

Pursuant to Section 1.1206 of the FCC rules, a copy of this notice of *ex parte* communication is being filed electronically in the above referenced matters. Since these and similar issues were discussed in several other meetings held during the week we met with you, I am copying the participants in those meetings as well.

Again, thank you for meeting with us. We hope this compilation of record citations is helpful to the FCC. Please let us know if you have any questions or if Oncor can be of further assistance to the FCC.

³⁹ Initial Comments of the Florida IOUs, p. 18; Initial Comments of Oncor, p. 23; Initial Comments of the Alliance, p. 21; Initial Comments of Alliant, pp. 5-7; Initial Comments of EEI/UTC, pp. 17-18.

⁴⁰ Initial Comments of the Alliance, p. 21.

⁴¹ Initial Comments of the Alliance, p. 22.

⁴² Initial Comments of Oncor, p. 26; Initial Comments of the Florida IOUs, p. 20; Initial Comments of the Alliance, p. 22.

⁴³ Initial Comments of the Alliance, p. 22.

⁴⁴ Initial Comments of the Coalition, p. 23.

⁴⁵ Initial Comments of the Coalition, p. 23.

Mr. Brad Gillen
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Sincerely,

A handwritten signature in cursive script that reads "Lindsay S. Reese". The signature is fluid and elegant, with the first letters of each word being capitalized and prominent.

Lindsay S. Reese

LSR:lk

cc: Ms. Marlene Dortch
Mr. Zac Katz
Ms. Sharon Gillette
Mr. Bill Dever
Ms. Jenny Prime
Ms. Margaret McCarthy
Ms. Christine Kurth
Mr. Wes Platt
Mr. Marcus Mayer
Mr. Jeremy Miller
Mr. Al Lewis
Mr. Claude Aiken